

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 17, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: Rep. Christopher Harris (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 281, 3/13/2003; SB 283,
3/13/2003
Executive Action: HB 663; SB 281; SB 13

HEARING ON SB 281

Sponsor: SENATOR EDWARD BUTCHER, SD 47, Winifred

Opening Statement by Sponsor:

SENATOR BUTCHER opened on SB 281. He stated that this bill would provide a criminal penalty for the criminal act of damaging, destroying, or moving survey monuments without consent.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 55}

Proponents' Testimony:

Jim Kembell, Montana Association of Land Surveyors, supported SB 281.

SENATOR DANIEL MCGEE, SD 11, Laurel, supported SB 281. He stated he is a registered surveyor who has dealt with property monuments being destroyed. He stressed that this is an important bill to deal with people who intentionally destroy these monuments. He explained that a corner is a point of intersection and a monument is an object that sits at the point. This bill would clarify the criminal mischief statute thus giving the prosecution tools necessary to prosecute people who violate the law.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

The Committee discussed the case where a person accidentally hits or destroys a monument. **SENATOR MCGEE** explained that if you hit a monument with a mower, it would destroy your mower and possibly cause personal injury thus making the point that most monuments are intentionally moved or destroyed. The Committee discussed whether this is another designer crime. The county attorney would have to prove the defendant purposely or knowingly destroyed or moved the monument.

Closing by Sponsor:

SENATOR BUTCHER closed on SB 281. He stated that in most cases involving the destruction of monuments, it is pure vandalism. He stressed that this is not about pranksters tipping over

outhouses. The destruction of monuments costs a lot of time and money to restore them.

{Tape: 1; Side: A; Approx. Time Counter: 55 - 425}

HEARING ON SB 283

Sponsor: SENATOR MICHAEL WHEAT, SD 14, Bozeman

Opening Statement by Sponsor:

SENATOR WHEAT opened on SB 283, stating he brought this bill on behalf of friends in Bozeman who practice family law. He stated that this bill would revise laws relating to venue in family law cases. The first section would make 40-4-104 consistent with 25-2-118. He stated the bill also provides that when two parties have gone through mediation in a dissolution case, and an agreement is reached and executed, the parties are bound by the agreement.

{Tape: 1; Side: A; Approx. Time Counter: 425 - 513}

Proponents' Testimony:

Kent Kasting, Family Law Lawyer, Bozeman, supported SB 283. He stated that this bill clarifies the venue and jurisdiction statutes regarding a dissolution of marriage. The venue statute said a person has to reside in the county for 90 days before the action is filed. The dissolution statute states that the court has jurisdiction if a party resides in the county 90 days prior to the entry of the findings. To make these two statutes consistent, the bill amends the jurisdictional statute to tie in with the venue statute.

He stressed that he is a mediator and that the current law has problems. This bill would make mediation agreements enforceable once both parties have signed off on it. This bill would make a mediated agreement the same as a settlement agreement in a dissolution action. This means when parties reach an agreement, it is presented to the court and the court will decide whether it is conscionable or not.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 40}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

The Committee asked about the necessity for this bill. If a person spends 90 days in Montana, there would be no discrepancy between the venue and jurisdiction statutes. **Mr. Kasting** stated he could not give an example but the general reason for the bill is to avoid future challenges with the statutes. **REP. NOENNIG** responded that he has never had a problem in his practice with these statutes. He explained that if a party was domiciled for 90 days, that gives the court jurisdiction over the divorce. The venue statute has to do with moving from one county to another and a party can waive that, so where is the inconsistency.

Closing by Sponsor:

SENATOR WHEAT closed on SB 283.

{Tape: 1; Side: B; Approx. Time Counter: 41 - 163}

EXECUTIVE ACTION ON HB 663

Motion: **REP. GUTSCHE** moved that HB 663 DO PASS.

Discussion:

The Committee discussed this bill brought forth by **REP. LASZLOVICH**. The Committee discussed the Amendment regarding the removal of legal products which become contraband. **Mr. Tweeten, DOJ**, passed out an amendment to allow a notice to anything shipped to the wholesaler from the manufacturer, on or before the date the Attorney General gives notice of intent to delist a company, a wholesaler has 30 days to sell. Retailers would be authorized to sell any products shipped prior to the actual delisting. This amendment would provide protection to the manufacturers, retailers, and wholesalers; all three parties agree it is acceptable.

{Tape: 1; Side: B; Approx. Time Counter: 164 - 255}

Motion/Vote: **REP. LANGE** moved that HB 663 BE AMENDED. (Amendment 1) Motion carried 17-0, by voice vote. (REP. HARRIS gone.)

EXHIBIT(juh56a01)

Motion: REP. GUTSCHE moved that HB 663 BE CONCURRED IN AS AMENDED.

Motion/Vote: REP. NOENNIG moved that HB 663 BE AMENDED.
(Amendment 2) Motion carried 17-0, by voice vote.

EXHIBIT(juh56a02)

Motion: REP. GUTSCHE moved that HB 663 BE CONCURRED IN AS AMENDED.

Motion/Vote: REP. NOENNIG moved that HB 663 BE AMENDED.
(Amendment 3) Motion carried 17-0, by voice vote.

EXHIBIT(juh56a03)

Motion/Vote: REP. GUTSCHE moved that HB 663 BE CONCURRED IN AS AMENDED. Motion carried 17-0, by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 256 - 382}

EXECUTIVE ACTION ON SB 281

Motion: REP. STOKER moved that SB 281 BE CONCURRED IN.

Discussion:

The Committee discussed whether this would be another designer crime. REP. PARKER stated it is a bad bill; that the prosecution may already charge under the current law. REP. NOENNIG would not support it as it is another designer crime. REP. STOKER stated that as a realtor, he felt it is a good bill and he supported it. REP. GUTSCHE stated this bill is code clutter.

Motion/Vote: REP. GUTSCHE moved that SB 281 BE TABLED. Motion carried 13-4, by voice vote, with REPS. LANGE, NEWMAN, STOKER, and THOMAS voting no.

{Tape: 1; Side: B; Approx. Time Counter: 383 - 513}

EXECUTIVE ACTION ON SB 13

Motion: REP. GUTSCHE moved that SB 13 BE CONCURRED IN.

Motion/Vote: REP. GUTSCHE moved that SB 13 BE AMENDED. Motion carried 17-0 by voice vote.

Discussion:

John MacMaster stated that Brenda Nordlund, DOJ, never liked the interlock device. He explained that the staff has been coordinating the bills. If the Committee passes SB 37, part of this bill will be repealed. **REP. NEWMAN** asked why they are amending Page 5, Line 11 moving .18 percent to .16 percent. **John MacMaster** responded that since they moved BAC from .10 to .18, then they thought they should lower this by an equal amount. In context of 61-8-442, it makes it tougher on the offender to make it .16 as it would be a lower threshold at which a judge may impose an interlock device. He added that the Committee could change that number; that it is not a magic number.

{Tape: 2; Side: A; Approx. Time Counter: 1 - 108}

REP. RICE commented that real lives will be affected by this bill. She stated that she is concerned about the elderly who will be stopped, cuffed and stuffed for having a glass or two of beer or wine. She explained that there is no amount of money to compensate them for having to go through that. She stated she lives in a rural area where many elderly people will be negatively affected by this bill.

Motion/Vote: **REP. GALLUS** moved that SB 13 BE CONCURRED IN AS AMENDED. Motion carried 17-1, by roll call vote, with RICE voting no. (REP. HARRIS by proxy.)

{Tape: 2; Side: A; Approx. Time Counter: 109 - 212}

HEARING ON SB 298

Sponsor: **SENATOR FRED THOMAS, SD 31, Stevensville**

Opening Statement by Sponsor:

SENATOR THOMAS opened on SB 298. He stated this straight forward bill would bring balance to the venue laws in legal actions against state agencies. He stated that new language states, "The proper place of trial for an action that challenges the issuance or denial of a permit or certificate by a state agency is in the county in which the permitted or authorized activity would occur."

{Tape: 2; Side: A; Approx. Time Counter: 213 - 336}

Proponents' Testimony:

Leo Barry, Attorney, Western Environmental Trade Association, Helena, supported SB 298. He stated that if you look at the various parts of the Code in which permits are issued, you will see that venues vary. This bill involves a fill in the gap where the Code does not detail where venue should be. It is basically a Code "gap filler."

{Tape: 2; Side: A; Approx. Time Counter: 273 - 403}

Opponents' Testimony:

Ann Hedges, Montana Environmental Law Center, opposed SB 298. She emphasized that this bill involves actions against the State. DEQ is in Helena. If this bill passed, it would force DEQ to travel thus costing the Montana taxpayers and wasting unnecessary resources for travel. She felt this bill is an attempt to put political pressure on local judges; to allow facilities to violate environmental laws and would result in appeals to the Supreme Court. She stressed that the Court is very busy and this bill would unduly burden the Court.

She stated that pollution knows no boundaries and does not travel down county lines. A person down stream should have the option of not having to travel. People should have more options available and not be limited to the county where the offense occurred.

{Tape: 2; Side: A; Approx. Time Counter: 403 - 514}

Al Smith, Montana Trial Lawyers Association, Helena, opposed SB 298. He stated this is a designer bill based on special interests. He stated he is opposed to this bill because it is a bad idea to tinker with venue based on special interests. Judges should judge cases based upon the law not upon political attunement. He reiterated that this is a designer venue bill and he opposed it on that ground.

{Tape: 2; Side: B; Approx. Time Counter: 1 - 36}

Gene Fenderson, Montana Labor Caucus, opposed SB 298. He stated that what could be good for big business could be bad for a small business.

{Tape: 2; Side: B; Approx. Time Counter: 36 - 51}

Cody Ferguson, Northern Plains Resource Counsel, opposed SB 298. He stated that this bill would take the least efficient mode possible in a time of great budget cuts. This is a fiscally irresponsible bill. There is no funding to implement it. The current process is working and is efficient.

Don Judge, Teamsters Union and Montana Chapter of Sierra Club, opposed SB 298. He stated that there would be unintended consequences if this bill passed. He asked the Committee to table this bill.

{Tape: 2; Side: B; Approx. Time Counter: 52 - 126}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. LANGE asked Ms. Hedges if she really believed a district court judge in Helena is more qualified. **Ms. Hedges** responded that they are more familiar with the law. She stated that she would never imply that other judges outside of Helena are not qualified but that it would take them more time and they may not have enough time. She added that they would have a pretty steep learning curve.

{Tape: 2; Side: B; Approx. Time Counter: 127 - 145}

REP. GUTSCHE commented that it would seem advantageous to allow venue in Lewis and Clark County or in the county where the State Agency has an office. **SENATOR THOMAS** stated this bill would stop judge shopping.

REP. RASER commented that a situation would be more politically charged if the offending party employed a lot of people and a lot of jobs would be at stake if the plant closed. She felt that in a situation such as this, judges could feel political pressure to decide cases in a certain manner. On the other hand, if the case was heard in Helena, the judge would not have that political pressure and perhaps be more impartial.

{Tape: 2; Side: B; Approx. Time Counter: 146 - 322}

REP. CLARK asked Mr. Smith about what kinds of actions this venue statute would cover. **Mr. Smith** responded that it would affect the natural resources industry. **REP. CLARK** stated there have

been controversial issues in Sanders County such as the Rock Creek Mine. He stressed that during the permit process, if that is challenged, it would be at the district court in Libby. Since judges are elected officials, he posed whether they would be influenced. **Mr. Smith** responded that is a distinct possibility.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 7}

Closing by Sponsor:

SENATOR THOMAS closed on SB 298.

{Tape: 3; Side: A; Approx. Time Counter: 7 - 69}

EXECUTIVE ACTION ON SB 39

Motion: **REP. FACEY** moved that SB 39 DO PASS.

Discussion:

The Committee discussed the arguments made at the Hearing. **CHAIRMAN SHOCKLEY** stated his amendments meet the federal requirements. The DOT memo does not cite any case law to support their position that they do not have to comply with funding probation officers. **Director Galt** stated he would not take a position either way. The politics would be such that DOT would not have the option of spending it on a road. **CHAIRMAN SHOCKLEY** felt that there is a conflict in the propriety of his amendment to HB 2. He felt that his Amendment would work and would be crucial if SB 39 fails. **CHAIRMAN SHOCKLEY** provided memos from U.S. Department of Transportation, National Highway Traffic Safety Administration, on the use of highway safety grant funds for Virginia and use of grant funds for Texas.

EXHIBIT (juh56a04)

EXHIBIT (juh56a05)

EXHIBIT (juh56a06)

EXHIBIT (juh56a07)

Motion/Vote: **REP. LANGE** moved that SB 39 BE CONCURRED IN. Motion failed 9-9, by roll call vote, with REPS. **FACEY, HARRIS, LANGE, NEWMAN, NOENNIG, PARKER, RASER, STOKER, and THOMAS** voting aye.

{Tape: 3; Side: A; Approx. Time Counter: 70 - 414}

Motion/Vote: REP. GUTSCHE moved that SB 39 BE TABLED. Motion failed 9-9, by roll call vote, with REPS. CLARK, EVERETT, GALLUS, GUTSCHE, LASZLOFFY, MALCOLM, RICE, SALES, and SHOCKLEY voting aye.

{Tape: 3; Side: B; Approx. Time Counter: 1 - 26}

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh56aad)